

By



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,186	04/07/2004	Thomas R. Marsh	9066-23DV	7421
20792	7590	12/07/2005	EXAMINER	
MYERS BIGEL SIBLEY & SAJOVEC			LUGO, CARLOS	
PO BOX 37428				
RALEIGH, NC 27627			ART UNIT	PAPER NUMBER
			3676	

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Interview Summary</b>	Application No.	Applicant(s)	
	10/820,186	MARSH ET AL.	
	Examiner Carlos Lugo	Art Unit 3676	

All participants (applicant, applicant's representative, PTO personnel):

(1) Carlos Lugo. (3) \_\_\_\_\_

(2) Laura Kelley. (4) \_\_\_\_\_

Date of Interview: 02 December 2005.

Type: a) Telephonic b) Video Conference  
c) Personal [copy given to: 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No.  
If Yes, brief description: \_\_\_\_\_.

Claim(s) discussed: none.

Identification of prior art discussed: none.

Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.



BRIAN E. GLESSNER  
SUPERVISORY PATENT EXAMINER

Examiner Note: You must sign this form unless it is an  
Attachment to a signed Office action.

Examiner's signature, if required

## Summary of Record of Interview Requirements

### Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record

A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

### Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

#### Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

#### 37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,  
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

### Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: A telephone interview was conducted between Laura Kelley, the applicant's representative, and the examiner in order to clarify the rejection to claim 11 in view of McAlarney '455 and Wilson. The examiner noted that at points 12 and 13 of the last Office Action mailed on 11/29/05, the rejections in view of McAlarney '455 and Wilson to claim 11 should be under 35 USC 103(a) instead of being under 102(b). A clean copy of these rejections with the correct label is attached..

As to claim 8, McEvoy illustrates that the cushioning projection is generally semi-circular.

As to claim 10, McEvoy illustrates that the cushioning projection is closed at both ends.

As to claim 11, McEvoy illustrates that the cushioning projection is capable of having a thickness of between about .020 and about .090 inches.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cushioning projection described by McEvoy with a thickness of between about .020 and about .090 inches since the change in the dimension of a prior art device is a design consideration within the skill of the art. Furthermore, the current specification fails to show or demonstrates any showing of criticality having this dimension as the thickness of the cushioning portion.

CALM \*

12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 3,952,455 to McAlarney (McAlarney '455).

McAlarney '455 fails to positively disclose that the cushioning projection has a thickness of between about .020 and about .090 inches. McAlarney '455 illustrates that the cushioning projection is capable of having a thickness of between about .020 and about .090 inches.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cushioning projection described by McAlarney '455 with a thickness of between about .020 and about .090 inches since the change in the dimension of a prior art device is a design consideration within the

skill of the art. Furthermore, the current specification fails to shows or demonstrates any showing of criticality having this dimension as the thickness of the cushioning portion.

*Claim*  
13. **Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,148,584 to Wilson.**

Wilson fails to positively disclose that the cushioning projection has a thickness of between about .020 and about .090 inches. Wilson illustrates that the cushioning projection is capable of having a thickness of between about .020 and about .090 inches.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cushioning projection described by Wilson with a thickness of between about .020 and about .090 inches since the change in the dimension of a prior art device is a design consideration within the skill of the art. Furthermore, the current specification fails to shows or demonstrates any showing of criticality having this dimension as the thickness of the cushioning portion.

14. **Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 2,185,161 to Tinnerman in view of US Pat No 1,998,791 to Schanz and further in view of US Pat No 6,148,584 to Wilson.**

Tinnerman discloses a device (C) comprising a base member having opposite first and second faces and a cushioning projection (Figures 1 and 2) extending outwardly from the second face of the base member and covering and defining a void